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11 Specially appearing for Protestants Save Our Sandhill Cranes and Environmental Council of  
12 Sacramento for Purposes of Presenting Part 2 Testimony

13 **BEFORE THE**

14 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

15 HEARING IN THE MATTER OF  
16 CALIFORNIA DEPARTMENT OF WATER  
17 RESOURCES AND UNITED STATES  
18 BUREAU OF RECLAMATION  
19 REQUEST FOR A CHANGE IN POINT OF  
20 DIVERSION FOR CALIFORNIA WATER FIX

21 **OPENING STATEMENT OF**  
22 **FRIENDS OF STONE LAKES NWR, SAVE**  
23 **OUR SANDHILL CRANES, AND**  
24 **ENVIRONMENTAL COUNCIL OF**  
25 **SACRAMENTO (LOCAL CONSERVATION**  
26 **GROUPS)**

1 **I. INTRODUCTION**

2 Friends of the Stone Lakes National Wildlife Refuge (“Friends of Stone Lakes NWR”),  
3 Save Our Sandhill Cranes (“SOSC”) and the Environmental Council of Sacramento (“ECOS”)  
4 (collectively “Local Conservation Groups”) are participating in Part 2 of this hearing in order to  
5 explain how the Delta Tunnels project would have an unreasonable impact on fish and wildlife,  
6 and why granting the Petition would not be in the public interest. Local Conservation Group  
7 Protestants will demonstrate that granting the Petition would cause unreasonable impacts to  
8 fish and wildlife through the direct testimony of witnesses summarized below.

9 The testimony provided by the Local Conservation Groups focuses on impacts of the  
10 project in the northern Delta, and in particular in the vicinity and within Stone Lakes National  
11 Wildlife Refuge. (See Project Location Map at LAND-120.) Established in 1994, Stone Lakes  
12 NWR was designated one of the 10 most threatened refuges in the nation, primarily due to  
13 urban encroachment in 2015. Now in addition to continued urban encroachment and  
14 environmental problems that come with it, Petitioners are proposing to further disrupt the  
15 wildlife values at the Refuge with 14 years of construction, and then ongoing operation of some  
16 of the largest water infrastructure components in the entire state. In addition to the widespread  
17 and ongoing wildlife disturbances from the project, one of the most concerning hazards are the  
18 power transmission lines that would be necessary to meet the project’s large power demands  
19 during construction and operation.

20 In addition to direct impacts on wildlife, the project would also interfere with other  
21 conservation efforts in our region, and lessen the chances of success for locally developed  
22 Habitat Conservation Plans. In addition, the project’s proposed fill of about 700 acres of  
23 wetlands and/or waters is likely the largest single modern-day wetland fill request. The scale  
24 of the project also means that entire ecosystems would be damaged, as well as wildlife  
25 corridors identified by the state. While the FEIR/S addresses each species separately, this  
26 testimony will provide further context for how the proposed changes would have negative  
27 impacts on a regional conservation scale.

1 Due to grave concerns about the detriment the Delta Tunnels would cause to the  
2 Refuge, Friends of Stone Lakes NWR worked diligently with DWR and its consultants to try to  
3 minimize the impacts on terrestrial resources of the project. Despite some improvements in  
4 mitigation since the initial project proposals, as well as commitments to try certain experimental  
5 measures, this project would still have unreasonable impacts on wildlife and the public interest.

## 6 **II. SUMMARY OF TESTIMONY**

### 7 **A. Greater Sandhill Crane and Fully Protected Species Focus Panel**

8 One of the unique features of the northern Delta and the larger project area, is the  
9 wealth of birdlife. Some species stay in our region all year, and others may spend only part of  
10 the year here. All of this wildlife, regardless of its particular status should be protected from  
11 unreasonable impacts from the proposed new Delta Tunnels diversions. While impacts to  
12 aquatic life are certainly important and should be considered, terrestrial wildlife impacts are  
13 equally important in considering grant of a water rights petition.

14 This panel will describe how certain species that are supposed to be *fully protected*  
15 under state law would be greatly disturbed, and in some cases killed, by this project if the  
16 petition is approved. Those species include the Greater Sandhill Crane, the White-tailed Kite  
17 and the Black Rail. (See LAND-120, SOSC-3, SOSC-8.)

#### 18 Scott Finley (FSL-1)

19 Scott Finley, a retired attorney and Friends of Stone Lakes NWR board member, will  
20 describe the Refuge and the work of the Friends to protect and to provide conservation and  
21 education programs for the benefit of the general public. Mr. Finley will describe how the direct  
22 and indirect adverse impacts to the Refuge would arise from the construction of the proposed  
23 Delta Tunnels. Mr. Finley will also provide background about why the Friends of Stone Lakes  
24 NWR are concerned about the mortality to Greater Sandhill Cranes from new transmission  
25 lines, as well as other project impacts that would degrade Refuge resources.

#### 26 Dr. Gary Ivey (FSL-21)

27 A preeminent Greater Sandhill Crane expert, Dr. Ivey has spent decades studying the  
28 Greater Sandhill Cranes that call the Delta home each winter. Integral to the drafting of the

1 analysis of Greater Sandhill Cranes that was developed for the now-defunct Bay Delta  
2 Conservation Plan, Dr. Ivey will describe how the “take” analysis for cranes was developed.

3 Then, Dr. Ivey will explain why, given the special characteristics of the cranes, the new  
4 transmission lines within the crane use area would pose a mortality risk and result in take of  
5 this fully-protected species. Though certain measures have been included in the project to  
6 reduce take at existing power lines, Dr. Ivey concludes these measures would not prevent  
7 some unpermittable “take” of Greater Sandhill Cranes from occurring as a result of the  
8 project’s proposed new transmission lines.

9 Dr. Ivey will also discuss the project disturbance effects that would result in additional  
10 take of Greater Sandhill Cranes, as well as the project’s cumulative impacts contributing to  
11 habitat loss in the Delta. In addition, Dr. Ivey will describe his concerns regarding the failure of  
12 Petitioners to adequately describe and address the project’s likely effects on the Lesser  
13 Sandhill Crane, which would be significantly impacted by take and habitat losses from the  
14 project.

15 Michael Savino (SOSC-1)

16 The president of Save Our Sandhill Cranes (“SOSC”), Michael Savino will provide  
17 background regarding the creation of SOSC and his concerns about the Delta Tunnels project  
18 causing harm to the cranes. Mr. Savino will also describe the successes of the Lodi Sandhill  
19 Crane Festival and the Galt Winter Bird Festival, as well as the free public crane viewing tours  
20 SOSC provides in the Delta region that introduce hundreds of tourists to the Delta every year,  
21 bringing visitors and economic benefits to our region. (SOSC-4, SOSC-5) Mr. Savino will also  
22 describe some of the characteristics of the Greater Sandhill Crane that make it special and  
23 worthy of protection. (SOSC-3.)

24 Dr. Edward Pandolfino (SOSC-21)

25 An avid birder, researcher and writer regarding avian issues, Dr. Pandolfino will  
26 describe why the project as described would result in unreasonable impacts to avian wildlife.  
27 First, Dr. Pandolfino will discuss why the “take” estimates for Greater Sandhill Crane are likely  
28 low, given current science on the effectiveness of bird diverters in preventing take and other

1 factors. Dr. Pandolfino also will address the potential for likely take of the California Black Rail  
2 and the possible take of the White-tailed Kite, which are also fully protected species under  
3 state law.

4 Jim Pachl (ECOS-27)

5 A long-time advocate for the Swainson's Hawk, Jim Pachl will describe his concerns  
6 with the project's permanent destruction of over 3,000 acres of Swainson's Hawk foraging  
7 habitat, 22 acres of nesting habitat, including at least seven nest sites with suitable trees, and  
8 the temporary loss of an additional 1,134 acres of foraging habitat. Mr. Pachl also describes  
9 other unfavorable project impacts such as disturbance noise from construction and increased  
10 truck traffic, dust, rodent control measures, habitat fragmentation, and increased distances  
11 from SWH nests to suitable foraging due to habitat destruction. Mr. Pachl also expresses  
12 concern with the location of likely Swainson's Hawk replacement habitat too far away to benefit  
13 the population impacted by the project.

14 **B. Regional Conservation Concerns and the Public Interest**

15 The Regional Conservation Panel, presented by stalwarts of the local environmental  
16 community, will describe how the project should be viewed in the context of other local  
17 conservation concerns.

18 Robert Burness (ECOS-1)

19 A former planner with the County of Sacramento and longtime board member of the  
20 Friends of Stone Lakes NWR, Mr. Burness will discuss the importance of South Sacramento  
21 County's habitats, such as permanent and seasonal wetland, valley grassland, mixed riparian  
22 woodland, agricultural cropland, and to the east, blue oak woodland, that would be most  
23 directly impacted by the Delta Tunnels project. Mr. Burness will describe why he is concerned  
24 about the project's potential to interfere with the successful implementation of the South  
25 Sacramento HCP. In addition, Mr. Burness will describe why the reduction in groundwater  
26 levels from the project would be ecologically harmful, especially given the already perilous  
27 state of the subbasin. (ECOS-7, ECOS-9.) Mr. Burness will also explain why truck traffic from  
28 the project would be especially harmful to Refuge resources. Last, Mr. Burness will explain his

1 concern that certain commitments by the project proponents are vague and unlikely to occur  
2 as promised.

3 Sean Wirth (SOSC-6)

4 A biologist and tireless environmental steward of our local area, Sean Wirth will provide  
5 both project-specific wildlife testimony, as well as broader insights regarding the future of  
6 environmentally sensitive areas if the project was to be built and operated. First, Mr. Wirth will  
7 describe how the project would interfere with the successful implementation of the almost  
8 completed South Sacramento HCP, which encompasses most of Sacramento County south of  
9 Highway 50. Mr. Wirth will then provide specific information regarding his concerns with the  
10 Greater Sandhill Crane, including possible abandonment of foraging and roosting habitat as a  
11 result of the project as well as the experimental nature of some of the crane measures.

12 (SOSC-9.) Last, Mr. Wirth will discuss the massive scale and effect of the proposed wetland  
13 and waters fill proposed by the project, which will destroy a large part of the last remaining  
14 wetlands in California.

15 David Yee (SOSC-72)

16 An avid bird watcher and bird guide, Mr. Yee will describe the cultural significance of the  
17 wildlife of the Delta, including the values to future generations. Mr. Yee will also present a map  
18 showing the high use of the Delta by birders. (SOSC-77.) Mr. Yee will express his concerns  
19 regarding the project's negative impacts on birds and other wildlife and the impact on birding  
20 and birding tourism in the Delta.

21 Dr. Judith Lamare (ECOS-11)

22 A former public policy professional in the air quality field, Dr. Judith Lamare will describe  
23 her concerns with construction of this massive project in air districts that do not meet air quality  
24 standards and are struggling to implement plans to do so. Dr. Lamare will discuss how the  
25 project's air impacts should be viewed holistically, rather than be divided by air basin. Dr.  
26 Lamare will also explain why the project's commitment to purchase offsets for criteria  
27 pollutants as well as greenhouse gasses may be ineffective and/or unimplementable, leading  
28 to unmitigated air impacts and the potential for the project to lose its conformity designation.

1 **III. DEFICIENCIES IN PETITION**

2 The same deficiencies in the Petition that made it difficult to meaningfully respond in  
3 Part 1, also plague the Part 2 process. In their Petition, impacts to terrestrial resources are  
4 disposed in just two paragraphs on page 16 of 24:

5 **3. Impacts to Terrestrial Resources**  
6 ***Construction Impacts***

7 In addition to mitigated impacts to the aquatic environment, construction of new  
8 north Delta intakes would include mitigation of any effects to valley/riparian and  
9 grassland natural communities and terrestrial species habitats. Several species,  
10 including Swainson’s hawk, valley elderberry longhorn beetle, least Bell’s vireo,  
11 and white-tailed kite, have suitable habitat within riparian areas near the intake  
12 sites. However, construction and management associated with the California  
WaterFix would have no long-term adverse effects on the habitats. In addition,  
impacts would be offset through mitigation that includes the restoration and  
protection of valley/foothill riparian habitat.

13 White-tailed kite, northern harrier, and short-eared owl are three species  
14 associated with grassland habitats that have the potential to occur near the  
15 intake sites. Mitigation will offset any losses of grassland as result of construction  
16 activities including restoration and protection of grassland habitat and protection  
17 of cultivated lands maintained in crop types that provide similar habitat values for  
18 the species. For terrestrial species, protection and restoration for the loss of  
19 valley/riparian and grassland habitats would be minimized through specific  
20 requirements to minimize and avoid disturbances to species and habitats.  
21 For example, a nondisturbance buffer will be established around each active  
22 white-tailed kite and Swainson’s hawk nest site. No entry for construction activity  
will be allowed in the buffer while a nest site is occupied by white-tailed kite or  
Swainson’s hawk during the breeding season. In addition, to minimize near-term  
loss of habitats, a program to plant mature trees will be implemented. Planting  
larger, mature trees, including transplanting trees scheduled for removal, and  
supplemented with additional saplings, is expected to accelerate the  
development of potential replacement nesting habitat.

23 According to DWR-324, which provided some further information at the request of the  
24 Board pursuant to 23 California Code of Regulations section 794:

25 Extensive information on potential impacts to fish, wildlife and other instream  
26 beneficial uses is provided in the RDEIR/SEIS (see Exhibit SWRCB-3,  
27 (RDEIR/SDEIS) sections 4.1.2.3; 4.3.7; 4.3.8; App. A, Chapter 11 for Fish and  
28 Aquatic Resources; and App. A, Chapter 12 for terrestrial biological resources)  
and in the August 26, 2015 CWF Petition for Change (Exhibit SWRCB-1, p. 14-  
18) including the RDEIR/SEIS submitted as part of the CWF Petition for Change  
and the September 11, 2015, Petition Addendum and Errata (Exhibit SWRCB-2,

1 Environmental Information, p. 1). In addition, Reclamation's Draft BA provides  
2 information on CWF potential effects on listed species under NMFS jurisdiction in  
3 Chapter 5 and the potential effects on Delta Smelt and terrestrial species in  
4 Chapter 6. The information related to potential impacts to fish, wildlife and other  
5 instream beneficial uses will be presented in Part 2 of the CWF hearing.

6 This minimalistic information fails to address the multitude of unreasonable  
7 impacts on wildlife discussed in detail in the Local Conservation Groups' case in chief.  
8 In particular, Petitioners appear to be attempting to avoid all discussion of the project's  
9 illegal take of fully protected species, which would be by definition, an unreasonable  
10 impact not in the public interest. As explained in the Local Conservation Group's  
11 testimony *and in Petitioners' own prior analyses*, wildlife such as the fully protected  
12 Greater Sandhill Crane, White-tailed Kite and Black Rail would be taken in the course of  
13 the project's construction and operation. In addition, the project would interfere with  
14 other conservation efforts and be damaging on a regional scale to local natural  
15 communities as well as rare wetland resources.

16 **IV. INADEQUATE CONDITIONS ARE PROVIDED TO PREVENT UNREASONABLE**  
17 **IMPACTS TO FISH AND WILDLIFE**

18 Recommendations for permit conditions to lessen the project's unreasonable impacts to  
19 fish and wildlife are included in the testimony of the Local Conservation Groups. In contrast,  
20 the Petitioners themselves have proposed NO CONDITIONS to address the concerns raised in  
21 this hearing. Rather, Petitioners chose to rest on the measures included in the adopted  
22 Mitigation Monitoring and Reporting Program by DWR, in addition to state and federal permit  
23 conditions for take of special status species applicable to the new diversions. This Board,  
24 however, has broad authority to *and must* impose the conditions necessary to meet the  
25 requirements applicable to this change petition.

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1 **V. CONCLUSION**

2 The SWRCB should deny the WaterFix Petition because the project would cause  
3 unreasonable impacts to fish and wildlife, is not in the public interest, and is contrary to law.

4 Respectfully submitted,

5 Dated: December 18, 2017

SOLURI MESERVE,  
A LAW CORPORATION

6 

7 \_\_\_\_\_  
8 Osha R. Meserve  
9 Attorneys for Protestants  
10 Local Conservation Groups

1 **STATEMENT OF SERVICE**

2 I hereby certify that I have this day, December 18, 2017, submitted to the State Water  
3 Resources Control Board and caused a true and correct copy of the following document:

4 **OPENING STATEMENT OF**  
5 **FRIENDS OF STONE LAKES NWR, SAVE OUR SANDHILL CRANES, AND**  
6 **ENVIRONMENTAL COUNCIL OF SACRAMENTO (LOCAL CONSERVATION GROUPS)**

7 to be served **by Electronic Mail** (email) upon the parties listed in Table 1 of the **Current**  
8 **Service List** for the California WaterFix Petition Hearing, dated December 18, 2017, posted by  
9 the State Water Resources Control Board at  
10 [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_water\\_fix/service\\_list.shtml](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_water_fix/service_list.shtml)

11 I certify that the foregoing is true and correct and that this document was executed on  
12 December 18, 2017.

13 Signature:  \_\_\_\_\_

14 Name: Mae Ryan Empleo

15 Title: Legal Assistant for Osha R. Meserve  
Soluri Meserve, A Law Corporation

16 Party/Affiliation:

17 Local Agencies of the North Delta

18 Daniel Wilson

19 Friends of Stone Lakes National Wildlife Refuge

20 Save Our Sandhill Cranes

21 Environmental Council of Sacramento

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